

Fair Political Practices Commission

To: Chairman Randolph; Commissioners Blair, Downey, Karlan, and Knox

From: Luisa Menchaca, General Counsel
C. Scott Tocher, Commission Counsel

Subject: Pending Litigation

Date: August 21, 2003

1. *California ProLife Council, Inc. v. Karen Getman et al.*

This case is a challenge to the Act's reporting requirements regarding express ballot measure advocacy. On October 24, 2000 the district court dismissed certain counts for standing and/or failure to state a claim. On January 22, 2002, the court denied a motion for summary judgment filed by plaintiff, and granted the FPPC's cross-motion. The Court entered judgment on January 22, 2002, and plaintiff filed a Notice of Appeal with the Ninth Circuit Court of Appeal. The appeal was briefed by the parties, and by Amici The Brennan Center for Justice and the National Voting Rights Institute (joining in one brief) and the states of Washington, Nevada and Oregon (joining in one brief.) The court heard oral argument on February 11, and rendered its decision on May 8, 2003. The court rejected plaintiff's legal claims, affirming that the challenged statutes and regulations were not unconstitutionally vague, and that California may regulate ballot measure advocacy upon demonstrating a sufficient state interest in so doing. The court remanded the matter back to the trial court to determine whether California can establish a state interest sufficient to support its committee disclosure rules, and to determine whether the state's disclosure rules are properly tailored to that interest. A status conference was held before district judge Frank C. Damrell on July 18, 2003. A Scheduling Order has been served on the parties, as directed by the Ninth Circuit. A Mid-Litigation Status Conference is scheduled for October 3, 2003 and trial is set for May 24, 2004.

2. *FPPC v. Californians Against Corruption et al*

The case stems from the FPPC's 1995 administrative prosecution of a recall committee that failed to properly itemize its contributors, in violation of section 84211. In November 1995, the FPPC issued a default decision and order against defendants, imposing an administrative penalty of \$808,000. In January 1996, the FPPC brought a collection action in the Sacramento Superior Court to convert the penalty to a civil judgment. Defendants responded by filing a cross-complaint/petition for writ of mandate in the Superior Court, contesting the default decision. In July 2000, the Superior Court dismissed the defendants' pleadings for failure to prosecute. In March 2001, the Superior Court granted the FPPC's motion for summary judgment in the collection action, and entered judgment for \$808,000 plus interest. Defendants

then filed this appeal in April 2001, before the Third District Court of Appeal. The matter was heard on April 22, and on May 29 the court issued its opinion affirming the Superior Court's decision. Defendants next filed a petition for review with the Supreme Court on July 9. The FPPC filed a response to this petition on July 29.

3. FPPC v. Agua Caliente Band of Cahuilla Indians, et al.

The FPPC alleges in this action that the Agua Caliente Band of Cahuilla Indians contributed more than \$7.5 million to California candidates and ballot measure campaigns between January 1 and December 31, 1998, but did not timely file major donor reports disclosing those contributions. The suit also alleges that the Agua Caliente Band failed to timely disclose more than \$1 million in late contributions made between July 1, 1998 and June 30, 2002. The FPPC later amended the complaint to add a cause of action alleging that the tribe failed to disclose a \$125,000 contribution to the Proposition 51 campaign on the November 5, 2002 ballot. The Agua Caliente Band has filed a Motion to Quash Service for Lack of Personal Jurisdiction, alleging that it is not required to comply with the Political Reform Act because of tribal sovereign immunity. A hearing on that motion was held on January 8, 2003, before the Honorable Loren McMaster, in Department 53 of the Sacramento County Superior Court. On February 27, the court ruled in the Commission's favor. On April 7, 2003, the Agua Caliente Band filed a petition for writ of mandate in the Third Appellate District of the Court of Appeal challenging the decision of the trial court. The petition was summarily denied on April 24, 2003. On May 5, the Agua Caliente Band filed a Petition for Review in the California Supreme Court. On June 23, 2003, the court extended the deadline by which it must grant or deny review to August 1, 2003. On July 2, 2003, the court requested the FPPC to file an Answer to the Agua Caliente Band's Petition for Review by July 11, 2003. The FPPC filed its letter brief Answer on July 11, 2003. The Agua Caliente Band filed its reply on July 14, 2003. On July 23, 2003, the Supreme Court granted review and transferred the case to the Third District Court of Appeal, directing that court to vacate its original order and to issue an order directing the Sacramento County Superior Court to show cause why the relief sought in the Agua Caliente Band's petition should not be granted. The FPPC filed its return on August 19, 2003 and the Attorney General filed an amicus brief supporting the FPPC's position on that date. Prior to these developments, the Superior Court had scheduled a status conference for December 4, 2003.

4. FPPC v. Santa Rosa Indian Community of the Santa Rosa Rancheria

The FPPC alleges in this action that the Santa Rosa Indian Community of the Santa Rosa Rancheria (the Santa Rosa Rancheria) failed to file major donor semi-annual campaign statements in the years 1998, 1999, and 2001, involving more than \$500,000 in political contributions to statewide candidates and statewide propositions. The suit also alleges that the Santa Rosa Rancheria failed to disclose more than \$350,000 in late contributions made in October 1998. The complaint was originally filed on July 31, 2002, and was amended to October 7, 2002. On January 17, 2003, the Santa Rosa Rancheria filed a Motion to Quash

Service of Summons and First Amended Complaint. This motion is based upon its claim of tribal sovereign immunity from suit. The FPPC's response to the motion was filed on February 10, 2003. The matter was originally scheduled to be heard on February 20, 2003, but was continued to March 6, 2003 at the request of Defendant. The matter was heard on that date before the Honorable Joe S. Gray in Department 54 of the Sacramento County Superior Court, and on May 13, 2003 the court entered its order in favor of Defendant. On July 14, 2003, the FPPC filed its Notice of Appeal in the Sacramento County Superior Court, thus initiating an appeal of that court's decision in the Third District Court of Appeal.

5. *McClintock v. Shelley, FPPC*

Senator McClintock, a candidate for Governor in the upcoming October 7, 2003 special election, filed a petition for writ of mandate in Sacramento Superior Court seeking an order directing the Secretary of State to accept and publish his Candidate Statement to be published in the ballot pamphlet. The Secretary of State, on the basis of advice provided by the FPPC, advised the candidate he could not amend the original Form 501 to indicate acceptance of the expenditure limits, which he rejected in the original filing. The acceptance of expenditure limits is a necessary condition to having a candidate statement in the ballot pamphlet. The Attorney General is representing the Secretary of State. Not named in the Petition, the FPPC successfully moved the court for intervention as a Respondent and filed the same day an Opposition and Answer to the writ petition according to an expedited briefing schedule ordered by the court. The court scheduled hearing on the matter for Tuesday, August 26.

6. *Larry R. Daniels v. FPPC.*

This is a Petition for Writ of Mandate filed November 7, 2002 in the Sacramento County Superior Court, directed to the proposed decision of an Administrative Law Judge which had not yet come before the Commission. The FPPC filed a preliminary opposition to the petition on November 12, 2002, asserting that Daniels had failed to exhaust his administrative remedies, since the Commission has not yet adopted, modified or rejected the proposed decision of the Administrative Law Judge, rendering the Petition premature. The Commission adopted the proposed decision at its December 2002 meeting. The FPPC initiated collection and filed a motion to strike Daniels's answer in that matter. A hearing on that is set for September 3, 2003. Daniels set the writ matter for a hearing on October 3, 2003, before the Sacramento County Superior Court. The Commission is being represented in the writ matter by the Attorney General's office.